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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------------------------------------------------------------------------------------------------------------------------------|-------------|----------------------|-------------------------------|------------------------|
| 10/010,486 | 12/07/2001 | William Frantz | PD-201169 | 6438 |
| 7590 Hughes Electronics Corporation Patent Docket Administration P.O. Box 956 Bldg. 1, Mail Stop A109 El Segundo, CA 90245-0956 | | | EXAMINER MONTOKA, OSCITA I | |
| | | | ART UNIT 2623 | PAPER NUMBER |
| | | | MAIL DATE 09/25/2008 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/010,486

Applicant(s)

FRANTZ, WILLIAM

Examiner

OSCHTA MONTOYA

Art Unit

2623

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-12 and 14-48 have been considered but are moot in view of the new ground(s) of rejection.
2. In response to applicant's arguments (pages 12 and 13) against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case Zigmund teaches that the system is able to identify the viewer (Col. 9, line 56 to Col. 10, line 3) and to deliver targeted advertisement based on this identification (Col. 8, line 1 to Col. 10, line 3). Lu is able to identify the presence of a viewer next to a viewing area (figure 1, Col. 8, lines 20-40). Therefore, the combination teaches the claimed limitations. The board's decision indicated that claim 1 is broader than the specific disclosure in the specification and did not indicate any patentable subject matter. Furthermore, the Lu and Dimitrova references were introduced in response to applicant amendment and the references were not cited in the appeal brief and the board decision.
3. In response to applicant's argument (page 14) that Dimitrova does not teach "the sensor is an RF sensor that detects the presence of a viewer", applicant should note that Dimitrova's sensor is a sensor that transmits radio signal (paragraph 32) and radio signals are transmitted in radio frequencies; therefore, the sensors are RF sensors.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 5-10, 12, 14-16, 18-24, 26-31, 33-38, 40 and 42-48 rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond et al., US 6,698,020 in view of Lu et al., US 5,771,307.

Regarding claim 1, Zigmond discloses a communication system for delivering messages to a viewer, comprising:

a transmitter for transmitting broadcast programming **data stream separate from a message data stream** (62 66-figure 4, Col. 8, lines 1-48);

at least one communication apparatus having receiver circuitry for receiving said **message data stream** (audio/video advertisement) **and** said broadcast programming **stream**, (60 figure 4, Col. 4, lines 5-15, Col.8, lines 1-37),

said at least one communication apparatus further including:

a processor operatively connected to a mass storage device for processing and storing said messages **from the message data stream** (figure 4 and 5, Col. 8, lines 1-55).

Although, Zigmond teaches a sensor generating a using message indicative of a viewer using the broadcast programming wherein said processor accesses said messages for display in place of the broadcast programming **data stream** being

currently used by the viewer in response to the using message (Col.7, lines 26-36; Col. 8, lines 29-54). Zigmond fails to specifically disclose that this message is indicative of the viewer presence near the communication apparatus.

In an analogous art, Lu discloses a system where sensors are used in order to make sure that the viewer presence is near the communication apparatus (Col. 8, lines 20-67).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Zigmond's system to include sensors that indicate viewers' presence near the communication apparatus, as taught by Lu. The motivation would have been to guarantee the content will be watch by the viewer, in order to make sure the advertisement will have an audience for the benefit of the advertisement sponsors.

Claims 8, 14, 42-44, and 48 are rejected on the same grounds as claim 1.

Regarding claim 2, Zigmond and Lu disclose the communication system of claim 1. Zigmond further teaches said processor **accesses** said stored messages based upon detecting a trigger (Col. 8, lines 29-54).

Claims 9, 15, and 45 are rejected on the same grounds as claim 2.

Regarding claim 3, Zigmond and Lu disclose the communication system of claim 2. Zigmond further teaches said trigger comprises instructions received together with

the messages or from instructions embedded in the broadcast content or both (Col. 8, lines 29-54).

Claims 10, 16, and 46 are rejected on the same grounds as claim 3.

Regarding claim 5, Zigmond and Lu disclose the communication system of claim 1. Zigmond further teaches said messages are advertisements or commercials provided by content providers and intended for targeted subscribers (Col. 18, lines 29-37; Col.6, lines 1-11).

Claims 12, 18, and 47 are rejected on the same grounds as claim 5.

Regarding claim 6, Zigmond and Lu disclose the communication system of claim 5. Zigmond further teaches the advertisement or commercial **is displayed** on a display device operatively connected to the communication apparatus **for an** amount or length of time the advertisement or commercial is to be provided (Col. 10, lines 47-64; Col. 9, lines 21-38; Col. 9, line 55 to Col. 10, line 3).

Claim 19 is rejected on the same grounds as claim 6.

Regarding claim 7, Zigmond and Lu disclose the communication system of claim

1. Zigmond further teaches the communication apparatus is a receiver or a set top box (Col. 10, lines 3-15; Col. 7, lines 37-49).

Regarding claim 20, Zigmond and Lu disclose the communication system of claim 1. Lu further teaches the sensor comprises an IR sensor (Col. 23, lines 1-10).

Claims 27 and 34 are rejected on the same grounds as claim 20.

Regarding claim 21, Zigmond and Lu disclose the communication system of claim 1. Lu further teaches the sensor comprises an IR receiver (Col. 23, lines 1-10).

Claims 28 and 35 are rejected on the same grounds as claim 21.

Regarding claim 22, Zigmond and Lu disclose the communication system of claim 1. Lu further teaches the sensor comprises an IR receiver receiving a command stream from a remote control (Col. 23, lines 1-10).

Claims 29 and 36 are rejected on the same grounds as claim 22.

Regarding claim 23, Zigmond and Lu disclose the communication system of claim 1. Lu further teaches the sensor comprises a movement sensor (Col. 8, lines 58-

63).

Claims 30 and 37 are rejected on the same grounds as claim 23.

Regarding claim 24, Zigmond and Lu disclose the communication system of claim 1. Lu further teaches the sensor comprises artificial intelligence software that detects movement (counting sensor, Col. 8, lines 58-63, Col. 9, lines 40-58).

Claims 31 and 38 are rejected on the same grounds as claim 24.

Regarding claim 26, Zigmond and Lu disclose the communication system of claim 1. Lu further teaches the sensor comprises imaging hardware and software generating user presence data (Col. 9, lines 1-58).

Claims 33 and 40 are rejected on the same grounds as claim 26.

6. Claims 4, 11, 17, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond in view of Lu and further in view of applicant's admitted prior art.

Regarding claim 4, Zigmond and Lu disclose the communication system of claim 1. Zigmond further teaches transmitter further includes: an uplink facility for digitally encoding and multiplexing said **messages**, and for encoding and modulating said data

into a suitable frequency band for reception; and a satellite for receiving said data via an airlink from the uplink facility, and for transmitting the data to said at least one communication apparatus (Col. 17, lines 1-50, Col. 18, lines 1-6, figure 7, elements 38, 39, 56, 130, 132, 136, and 138).

Zigmond fails to teach that the signal is a packetized data stream.

Applicant's admitted prior art details that conventional satellite communications systems mix content in packetized streams and deliver the data packets to the receivers. The incorporation of the packetized streams in Zigmond would have been obvious to one of ordinary skill in the art because such streams are conventional and allow for segmented handling of data streams. Furthermore, incorporating packetized data streams in Zigmond is tantamount to the predictable use of prior art elements according to their established functions - an obvious improvement. *See KSR Int'l v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740 (2007). Therefore, it would have been obvious to one of ordinary skill in the art to modify Zigmond in view of Applicant's Admitted Prior Art to teach or suggest all of the elements of claims 4.

Claim 41 is rejected on the same grounds as claim 4.

7. Claims 25, 32, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond in view of Lu and further in view of Dimitrova et al., US 2003/0093784.

Regarding claim 25, Zigmond and Lu disclose the communication system of claim 1.

Zigmond and Lu fail to teach the sensor comprises an RF detection circuitry.

In an analogous art, Dimitrova teaches the sensors use radio signals (Para. 32).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Zigmond and Lu's system to include the use of RF circuitry, as taught by Dimitrova. The motivation would have been to transmit the signals wirelessly in order to avoid messy connections.

Claims 32 and 39 are rejected on the same grounds as claim 25.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OSCHTA MONTOYA whose telephone number is (571)270-1192. The examiner can normally be reached on Monday/Friday 7:30 to 5:00 off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on (571) 272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 2623

OM

**/Christopher Grant/
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